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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 27 1997

In the Matter of

Request for Clarification of FCC's Rules re:
Interconnection Between Local Exchange
Carriers and Commercial Mobile
Radio Service Providers

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket Nos. 95-185/96-98

To: Common Carrier Bureau

REPLY COMMENTS OF METROCALL, INC.

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To: Common Carrier Bureau

REPLY COMMENTS OF METROCALL, INC.

Metrocall, Inc., through its undersigned counsel and pursuant to the FCC's May 22, 1997 Public Notice (CCB/CPD 97-24), respectfully submits these Reply Comments in response to Southwestern Bell Telephone Company's ("SWB") request for clarification of the FCC's local exchange carrier ("LEC")/commercial mobile radio service ("CMRS") interconnection rules.

Summary of Comments.

The comments filed in this proceeding are remarkable for their consistency: virtually every paging company spoke of having problems with the LEC's not honoring the FCC's interconnection rules.¹ Indeed, one paging carrier indicated that an LEC has refused to provide it with additional interconnection facilities pending a dispute over these unlawful LEC interconnect charges.²

¹ See e.g., Comments of Contact New Mexico and BestComm.

² See Comments of Pagemart Wireless, Inc.

At the same time, the paging companies repeatedly pointed out how LECs profit from calls placed to paging networks.³ Also, the paging commenters explained how their networks defray the LECs' costs of transporting and terminating calls originated on LEC networks.⁴

The paging company commenters also noted that SWB's claims (that it is entitled to charge for local transport despite statutory language to the contrary) are by no means shared by all local telephone companies. Indeed, one commenter aptly observed that SWB's "affiliate", PacBell, has conceded the paging companies' position at least with regard to the elimination of local transport charges. Apparently, PacBell's only dispute in California concerned its requirement to pay termination charges to paging carriers.⁵

In addition to the LECs mentioned in Metrocall's Comments, PCIA noted that SNET and Sprint have also "reduced or eliminated" charges for DID numbers and local trunks. Indeed, Metrocall has since learned that Sprint has eliminated: all charges for NXX allocation, all recurring charges for DID numbers, and all one-way trunk charges for land-to-pager calls, and has begun to issue reimbursements for these charges dating back to the Fall of 1996.

The paging company commenters independently arrived at the same conclusion concerning Rule Section 51.709(b): that rule simply states the unremarkable FCC position that, where traffic flows *between carriers*, each carrier may only recover that portion of the facilities'

³ See e.g., Comments of Metrocall, BestComm and Contact New Mexico.

⁴ See e.g., Comments of Pagemart, Allied Personal Communications Industry Association of California ("Allied"), Metrocall and BestComm.

⁵ See Comments of Allied at p. 1.

costs related to the other carrier's use of the facilities.⁶ It simply makes no sense, despite SWB and some other LEC's arguments to the contrary, for the FCC to have adopted that rule as an alternative basis for circumventing its Rule Section 51.703(b) prohibition against LEC-originated local traffic charges.

And finally, there was unanimity among the paging carriers in answer to SWB's central question: how will LECs recover their costs in carrying local calls to a paging network? The answer from all the paging commenters was the same. LECs should recover these charges the way they always have (or *should* have) -- by charging the calling party.⁷

For their part, the LECs that filed comments focused mainly on reciprocal compensation issues, which Metrocall would certainly like the FCC to address, that were not presented in SWB's letters. In addition, one LEC, BellSouth, argued that paging carriers cannot "engage in 'self-help' by refusing to pay for facilities it has ordered from the tariffs of a LEC." Of course, BellSouth's position would be entirely untenable if its tariffs violate Parts 20 and 51 of the FCC's Rules, which is for this agency, not BellSouth, to decide.

BellSouth and other LECs also embraced SWB's contention that they don't charge paging carriers for local "traffic" *per se*, but, they intend to continue charging paging carriers for the local "facilities" used to carry that traffic to the paging network. For paging companies, of course, this amounts to the same thing: these LECs have adamantly refused to eliminate their local traffic trunking charges in violation of the Telecommunications Act and the FCC's Orders,

⁶ See, e.g., Comments of PCIA at p. 12; Comments of Contact New Mexico at p. 6, and Comments of Metrocall at pp. 5-6.

⁷ See e.g., Comments of PageNet, PageMart, Metrocall and BestComm.

while an increasing majority of the nation's LECs have honored the law and eliminated these charges.

The FCC's Interconnection Order Answered SWB's Questions

What is most remarkable about some of the LEC comments filed in this proceeding is their presumption that these LEC/paging interconnection issues have not already been addressed by Congress or the FCC.⁸ A perhaps extreme example of this is the LEC that, seemingly oblivious to the seismic revisions that have occurred to the Communications Act since 1993, cited previous FCC case precedents for the outdated proposition that "Commission policy allows LECs to assess recurring charges to paging companies for switching costs"⁹

Surely it cannot be denied that the FCC has directly addressed and answered both the local transport and the reciprocal compensation issues raised by SWB and certain LECs in this proceeding, and, its conclusions could not have been any clearer: "paging providers, as telecommunications carriers, are entitled to mutual compensation for the transport and termination of local traffic, and should not be required to pay charges for traffic that originates on other carriers' networks" See "Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, et al.", First Report and Order, CC Docket Nos. 96-98; 95-185 (August 8, 1996), appeal pending, Iowa Utilities Board v. FCC, No. 96-3321, *et seq.* at ¶ 1092 (emphasis added) (the "Interconnect Order"). It is not the paging industry's fault that certain LECs are only now beginning to realize that this is the prevailing law.

⁸ See e.g., Comments of U.S. West, GTE, and, the Independent Alliance.

⁹ See Comments of Lexington Telephone Company at pp. 2-3.

The only legitimate questions, then, that the FCC should be addressing here concern the *details*; that is, how do we *define* "local traffic/transport", and, how do we *calculate* paging "termination" costs so as to honor paging carriers' "mutual compensation" rights? In that context, it would be far more useful to cite Sprint's comments, rather than SWB's letters, as the appropriate framework for this FCC inquiry. Of all the LEC commenters, only Sprint fairly conceded that paging carriers do indeed have statutory (not "regulatory") rights of compensation and local transport, while also acknowledging the need for FCC clarification of the scope of these rights.¹⁰ In Metrocall's opinion, these are the appropriate questions that the FCC should address here, rather than backtracking over statutory rights analyses that the FCC has already covered.

The FCC anticipated that there would be some difficulties in applying its interconnection rules to LEC/paging arrangements (despite the LECs who believe that this was some oversight on the FCC's part). Indeed, in its Interconnection Order, the FCC admitted that it did not have sufficient information to determine a "reasonable proxy" for calculating what paging carriers are entitled to recover for terminating LEC calls. See Interconnection Order at ¶ 1093. There, the FCC stated that it would "initiate a further proceeding to try to determine an appropriate proxy for paging costs" Id. The range of confusion shown by the comments filed in this proceeding proves that the FCC ought to resolve these paging interconnection issues as soon as possible.

The Issues have been Joined

The delivery of local traffic without charge to paging carriers, and, compensation for call

¹⁰ See Comments of Sprint Corporation at p. 4.

termination, are the Gemini rights of the paging industry; this agency has already established these rights. The refusal of certain LECs to honor these transport and compensation rights, and the legitimate confusion of other LECs over the scope of these interconnection rights, suggests that the FCC needs to clarify the scope of these interconnection rights, and adopt a "paging proxy model" as soon as possible.

The Telecommunications Act of 1996, the FCC's Interconnection Order, and the FCC's rules dating back to at least 1993, cannot possibly be open to SWB's interpretation. Rather, it seems evident that LECs cannot charge for local transport, and, that paging carriers are entitled to compensation for call termination. Indeed, some commenters noted that the California PUC expressed surprise that PacBell would even suggest that Congress intended to exclude paging carriers, alone among all telecommunications carriers, from the benefits of "mutual compensation" under the Telecom Act of 1996. All that remains is for the FCC to clarify the scope of these paging carrier rights.

Although SWB did not directly ask the FCC to clarify its mutual compensation rules, it is obvious from all the comments that LEC/Paging local transport issues are inextricably joined with LEC/Paging mutual compensation issues. Hence, there are really only two areas that need to be "clarified" by the FCC in this proceeding: (1) *which* local charges may not be passed on by the LECs to paging carriers; and, (2) what is a "reasonable proxy" by which paging companies should be compensated for terminating LEC-originated local calls?

These should not be difficult questions to answer; after all, at least one state PUC, California, has already successfully grappled with them. At the same time, the stakes here are extraordinarily high for all paging carriers, and any agency delays in resolving these questions

will cause monthly financial hardships to paging carriers. The FCC ought to expeditiously answer these questions, so that these continuing instances of LECs extorting interconnect charges from paging carriers will promptly cease, and, so that paging carriers can proceed to recover the local termination charges to which they are entitled.

Conclusion

For all the foregoing reasons, Metrocall respectfully requests that the Bureau order all LECs to immediately cease and desist from charging paging carriers for local transport of LEC-originated traffic, order the LECs to credit or issue rebates to all paging carriers for these charges dating back to the effective date of the FCC's LEC/CMRS interconnection rules, adopt a "proxy model" for paging costs related to call termination, and take such other actions as are consistent with these and its previously filed comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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